

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 15**

HYUNDAI POWER TRANSFORMERS)	
USA, INC.)	
)	
and)	Cases 15-CA-230678
)	15-CA-240476
)	15-CA-231673
WILLIAM GIPSON)	
)	
and)	
)	
ASHLEE DISMUKES)	

**HYUNDAI POWER TRANSFORMERS USA, INC.’S REPLY
IN SUPPORT OF ITS MOTION FOR PARTIAL SUMMARY JUDGMENT**

Pursuant to the National Labor Relations Board ("Board") Rules and Regulations, Section 102.24, Hyundai Power Transformers USA, Inc., ("HPT") submits the following Reply in support of its Motion for Partial Summary Judgment:

I. INTRODUCTION

Counsel for the Charging Parties filed the NLRB Charges currently consolidated in this proceeding as a strategy to turn up the heat as much as possible against HPT to gain an advantage in currently pending litigation – two (2) pending federal lawsuits, a total of seven (7) EEOC charges, and potential additional lawsuits to be filed upon dismissal of the currently pending EEOC charges – not to mention the multitude of NLRB charges of which the Board is already aware. The heart of all of Mr. Gipson’s and Ms. Smith’s disputes with HPT, however, are based in Title VII and related provisions. They are not proper complaints before the NLRB.¹

¹ The Board’s General Counsel has recognized that primary jurisdiction in overlapping cases (where the allegations could fall under two agencies) should lie with the original Agency – here, the EEOC. *See generally Memorandum of Understanding Between OSHA and NLRB*, 40 FR 26083 (June 20,

If the Board declines to dismiss outright all of the NLRB proceedings filed by Mr. Gipson and Ms. Smith, it should nonetheless dismiss as time-barred Ms. Smith's Charge No. 15-CA-231673.² Further, this charge cannot be saved by Mr. Gipson's Charge 15-CA-230678, which fails to allege protected concerted activity concerning Ms. Smith.

II. ARGUMENT

A. Ashlee Smith's Charge is Untimely.

Counsel for the General Counsel acknowledges that a charge must be served on the respondent within six months of the alleged adverse action. *See* Resp. to Mtn. for Partial Summary Judgment, pp. 2-3; *see also Kelley v. NLRB*, 79 F.3d 1238, 1244 (1st Cir. 1996). Even accepting Counsel for the General Counsel's argument that the Charge need only be postmarked within six months of the alleged adverse action when it is served by the Regional office, Ms. Smith's Charge No. 15-CA-231673 is nonetheless untimely because this deadline also was not met.

Counsel for the General Counsel does not dispute that Ms. Smith was suspended on May 11, 2018 or that Ms. Smith's Charge No. 15-CA-231673 was postmarked November 28, 2018, more than six months after her May 11, 2018.³ *See* HPT's Mtn. for Partial Summary Judgment, ¶¶ 2, 6. Based on the foregoing, the undisputed facts establish that Ms. Smith's Charge No. 15-CA-231673 is time-barred because it was not served by the Charging Party

1975)(allegations involving discrimination against employees engaged in health and safety activity lies with OSHA, even where such alleged discrimination might also be proscribed under the NLRA) On that basis "the General Counsel will, absent withdrawal of [a charge that overlaps with an EEOC Complaint], defer or dismiss the charge." *Id.*

² Mr. Phifer's NLRB Charge has been dismissed.

³ Additionally, Ms. Smith's Charge 15-CA-231673 was not received by HPT until December 10, 2018.

on HPT within six months of Ms. Smith's suspension,⁴ and it was not post-marked within six months of Ms. Smith's suspension through any mailing by the Regional office.⁵ Indeed, in responding to HPT's Motion for Summary Judgment, Counsel for General Counsel does not even argue that Ms. Smith's Charge No. 15-CA-231673 was timely served.

B. Mr. Gipson's Charge Concerning Ms. Smith is Due to be Dismissed.

In the event Counsel for General Counsel argues that issues involving Ms. Smith are nonetheless properly before this Board because they were included to some extent in Mr. Gipson's Charge No. 15-CA-230678, this is unsupported and should be rejected. As set out in respondent's Position Statement concerning Mr. Gipson's Charge No. 15-CA-230678, Mr. Gipson does not identify any protected activity or union affiliation involving himself and Ms. Smith that supports Mr. Gipson's Charge No. 15-CA-230678 as asserted on behalf of Ms. Smith.⁶ Therefore, Ms. Smith's complaint to the Board cannot be saved from being time-barred by Mr. Gipson's separate charge. Accordingly, all allegations concerning Ms. Smith before the NLRB are due to be dismissed.

III. CONCLUSION

For the foregoing reasons, HPT respectfully requests that its Motion for Partial Summary Judgment be granted and that all complaints by or on behalf of Ms. Smith be dismissed.

⁴ See *Kelley*, 79 F.3d at 1244.

⁵ See Board Rules and Regulations, Section 102.14(c).

⁶ Indeed, not long ago, the Supreme Court explained that the phrase "other concerted activities" in Section 7 of the Act should be read in conjunction with the specific preceding detailed list of activities. See *Epic Systems Corp. v. Lewis*, 138 S.Ct. 1612, 1625 (2018). In other words, the phrase "other concerted activities" should not be interpreted so broadly as to encompass Mr. Gipson's alleged concerted activity here.

Respectfully submitted,

/s/ Jennifer M. Busby

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was electronically filed with the NLRB and sent to the following via e-mail, on this the 1st day of November, 2019:

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